Supreme Court, U.S.
FILED

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No. ____ CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

ANTHONY J. GOINS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

PETITION FOR A WRIT OF CERTIORARI

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20 pp

QUESTION PRESENTED

WAS PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN, DESPITE HIS PROTESTATIONS OF INNOCENCE, HIS LAWYER COERCED HIM TO PLEAD GUILTY TO MURDER, ENTER INTO A PRETRIAL AGREEMENT, AND ENTER INTO A STIPULATION OF FACT WHICH HE AND HIS COUNSEL KNEW TO BE FALSE?

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OCTOBER TERM, 1996

ANTHONY J. GOINS,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

OPINIONS BELOW

The order of the Court of Appeals for the Armed Forces, *United States v. Goins*, 44 M.J. __ (C.A.A.F. 1996), affirming the opinion of the Navy-Marine Corps Court of Criminal Appeals, is reprinted as Appendix A at Pet. App. 1a.

The unpublished opinion of the Navy-Marine Corps Court of Criminal Appeals, *United States v. Goins*, No. 94-1498 (N.M.Ct.Crim.App. November 2, 1995), is reprinted as Appendix B at Pet. App. 2a.

JURISDICTION

The Court of Appeals for the Armed Forces affirmed the decision of the Navy-Marine Corps Court of Criminal Appeals on September 18, 1996 (Appendix A at Pet. App. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1259(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right. . . to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

At trial, the following factual account was elicited during Petitioner's plea of guilty to unpremeditated murder. On September 26, 1993, Petitioner and Paul Sherry met Iris Stevens at a bowling alley in Waukegan, Illinois. They left the bowling alley and went to the home of Sherry's friend at Forrestal Village aboard Naval Training Center, Great Lakes. Sherry and Ms. Stevens had entered into an agreement whereby Sherry would provide Ms. Stevens drugs in exchange for sex.

When Sherry did not make good on his promise, Ms. Stevens became angry and began throwing projectiles. At this point, Sherry told Petitioner to "take her out." Petitioner grabbed Ms. Stevens by the arm and took her outside where they began to argue. Ms. Stevens struck Petitioner's face with open and closed

hands, and Petitioner responded by hitting and kicking Ms. Stevens upon her head and neck in excess of five times with his fists and feet. Initially, these blows were done to parry the initial attack by Ms. Stevens, but according to Petitioner, the situation changed, whereby Petitioner "threw everything at her." The blows delivered by Petitioner involved a technique he acquired in the course of his martial arts training, and were intended to hurt Ms. Stevens.

After Ms. Stevens fell to the ground, Petitioner picked her up, carried her a short distance, removed her clothes, and began dragging her. As Petitioner stopped dragging Ms. Stevens, she let out a sound as if all the air was escaping from her. Petitioner became alarmed, picked up Ms. Steven's clothes, threw them over a fence, and fled the scene.

Post-trial, Petitioner drafted a statement whereby he disaverred his role in the murder as attested to at trial, and described a different series of events that occurred on the evening of September 26, 1993. Petitioner related that he and Sherry met Ms. Stevens in the bathroom of the bowling alley where she was soliciting sex in exchange for crack cocaine. Sherry agreed to enter into such a bargain with Ms. Stevens, but Petitioner indicated that he wanted no part in such a transaction and attempted to call a cab to take him home. Petitioner was subsequently told that he could get a ride home from a friend of Ms. Stevens. The four individuals ultimately went together to an apartment at Forrestal Village where Sherry was staying with a friend.

When they arrived at Forrestal, each of the four individuals entered the apartment and consumed a beer, after which Ms. Steven's friend left without Petitioner. After drinking her beer, Ms. Stevens pressed Sherry to provide her with the crack cocaine he had promised.

Sherry went into the bathroom, shaved off some pieces of soap, and offered them to Ms. Stevens as crack cocaine. Ms. Stevens then placed the soap shavings in her pipe and attempted to smoke them.

Realizing that she was not smoking crack cocaine, Ms. Stevens became very angry and loud, began throwing various objects at Fireman Sherry, and instigated a fight with him. Petitioner stated that he attempted to break up the fight but was struck in the head by Ms. Stevens. Due to his inebriated state, Petitioner was knocked to the ground by the blow. Owing to his high level of intoxication and the blows that he sustained to his head, Petitioner stated that he had difficulty getting to his feet.

While Petitioner was lying on the floor, Sherry began to beat Ms. Stevens by striking her in the head with a beer bottle, knocking her to the ground with his bare fists, and kicking and stomping her in the head and neck. Petitioner maintained that he attempted to get to his feet to help Ms. Stevens but was unsuccessful. The beating that Fireman Sherry inflicted upon Ms. Stevens lasted about sixty to ninety seconds.

Sherry subsequently picked up the body of Ms. Stevens and asked Petitioner to help him carry her outside. Petitioner then attempted to help Sherry carry Ms. Stevens out the back door of the apartment but kept falling down due to his inebriated state. When Sherry left the apartment with Ms. Stevens, Petitioner followed, believing that there was still time to help Ms. Stevens. Once outside, Sherry removed Ms. Stevens' clothes (to make it appear that she had been raped), moved her approximately fifty yards, and then laid her down near a stray dog.

Petitioner next stated that he dragged her body away from the dog in an effort to help her, but Ms.

Stevens was already dead. Petitioner became consumed with fear and panic, threw Ms. Stevens' clothes over a fence, and then fled. Petitioner then attempted to locate the apartment where Sherry was staying, but was unable to recall its location and continued walking until he found his way back to the barracks.

The following evening, Petitioner located Sherry and discussed the events of the previous night. Sherry threatened Petitioner and warned him not to disclose to anyone what had transpired with Ms. Stevens. [1]

Petitioner was subsequently apprehended and placed in pretrial confinement on October 21, 1993. On March 17 and 29, and April 4 and 5, 1994, Petitioner was tried by general court-martial composed of officer members. Petitioner was convicted of unpremeditated murder, in violation of Article 118, Uniform Code of Military Justice, 10 U.S.C. 918, and was sentenced to confinement for life, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority approved the sentence as adjudged, and with the exception of the dishonorable discharge ordered it executed. However, pursuant to a pretrial agreement, the convening authority suspended all confinement in excess of thirty-five years for a period of thirty-five years.

In his post-trial statement, Petitioner admitted that

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[1] While Petitioner was engaged to his wife, he and Sherry were out one evening and ended up spending the night with two females. Petitioner did not want this damaging information divulged to his wife out of fear that it would have a seriously detrimental effect upon the marriage. Sherry threatened to disclose this information to Petitioner's wife if Petitioner refused to remain silent about the events of September 26.

he lied during the court-martial inquiry in an attempt to preserve his marriage and evade the death penalty. In a subsequent statement, Petitioner made a claim of ineffective assistance of counsel against his trial defense counsel. Petitioner maintains that his counsel advised him to plead guilty to the unpremeditated charge despite his proclamations of innocence, and ultimately coerced him into accepting a pretrial agreement which required that he enter into a stipulation of fact which Petitioner and counsel knew to be false.

Petitioner maintains that he did not kill Ms. Stevens. Rather, Sherry killed Ms. Stevens with repeated blows and kicks to her head and neck the night of the incident.

Upon meeting his defense counsel, Petitioner affirmed his innocence, and vehemently maintained that he did not murder Ms. Stevens. Petitioner explained that Sherry was the true perpetrator of the offense. Petitioner maintained his claim of innocence until advised to do otherwise by his defense counsel.

Petitioner was visited in the brig by his wife and defense counsel where they discussed the government's case against him. Petitioner's defense counsel explained to him that the government was going to convict somebody for the murder of Ms. Stevens, and the person they sought was Petitioner.

Petitioner again explained that he was innocent, and therefore, determined to fight the murder allegations in court. Counsel then explained that if the case was contested the government would "hang him." Counsel also advised that Petitioner could otherwise negotiate a pretrial agreement that would preclude a capital sentence. Finally, counsel advised Petitioner to either take the deal or risk the death penalty, in which case he would never see his wife again.

Bowing to the pressure, Petitioner agreed to plead guilty and accept the pretrial agreement under the impression that doing so would preserve his marriage and save his life. Trial defense counsel then drafted a stipulation of fact that was later signed by Petitioner and entered into evidence.

On appeal, the Navy-Marine Corps Court of Criminal Appeals affirmed Petitioner's conviction and sentence as adjudged. *United States v. Goins*, No. 94-1498 (N.M.Ct.Crim.App. November 2, 1995).

The United States Court of Appeals for the Armed Forces granted Petitioner's petition and summarily affirmed the conviction and sentence. *United States v. Goins*, 44 M.J. __ (C.A.A.F. 1996).

REASON FOR GRANTING THE PETITION

PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN, DESPITE HIS PROTESTATIONS OF INNOCENCE, HIS LAWYER COERCED HIM TO PLEAD GUILTY TO MURDER, ENTER INTO A PRETRIAL AGREEMENT, AND ENTER INTO A STIPULATION OF FACT WHICH HE AND HIS COUNSEL KNEW TO BE FALSE.

This Court has set out a two-part test for ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668 (1984). A petitioner must first show that his counsel's representation was deficient, and that it fell below an objective standard of reasonableness. *Id.* at 687-688. He must then

demonstrate a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *Id.* at 694.

This Court has applied the *Strickland* test to challenges of guilty pleas based on ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52 (1985). This Court held that to successfully challenge a guilty plea on the basis of ineffective assistance of counsel, an appellant must show that the plea was involuntary because counsel's advice to plead guilty was outside the range of competence demanded of attorneys in criminal cases, and also that there exists a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going to trial. *Id.* at 57-59.

According to the A.B.A. Standards for Criminal Justice, it constitutes unprofessional conduct for a lawyer to intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the accused's plea decision. *See* A.B.A. Standards for Criminal Justice: The Defense Function, Standard 4-5.1(b), 2d ed. In all appropriate circumstances, trial defense counsel should challenge the government's case if there exists genuine doubt that the prosecution can carry its burden of proof. *Id.*, Standard 4-6.1, Commentary at 4.73. Therefore, it stands as ineffective assistance of counsel to intentionally mislead the client as to the probable outcome of the trial. *United States v. Lonetree*, 31 M.J. 849, 874 (N.M.C.M.R. 1990), *modified*, 35 M.J. 396 (C.M.A. 1992), *cert. denied*, 113 S.Ct. 1813 (1993).

Petitioner's trial defense counsel overstated the risk of conviction for premeditated murder and exaggerated the likelihood of receiving the death penalty when he impelled Petitioner to accept the pretrial

agreement. Given Petitioner's declarations of innocence and his expressed desire to plead not guilty, his defense counsel should have refrained from advising that he plead guilty and, in turn, contested the case on its merits.

CONCLUSION

This clearly was a violation of the Petitioner's Sixth Amendment Right to effective assistance of counsel where his lawyer, despite Petitioner's protestations of innocence, coerced him to plead guilty to murder, enter into a pretrial agreement, and enter into a stipulation of fact that both he and Petitioner knew to be false. This coercion was effectuated by his lawyer's ill-advised counsel to either accept the pretrial agreement and plead guilty, sparing his life in the process, or otherwise face a penalty of death.

Respectfully submitted,

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December 1996

APPENDICES

APPENDIX A

U.S. COURT OF APPEALS FOR THE ARMED FORCES

No. 96-0768/NA

Crim.App. No. 94-1498

United States, *Appellee*

v.

Anthony J. GOINS, Machinist's Mate Fireman Apprentice, U.S. Navy, *Appellant*

Appeal -- Summary Disposition

On consideration of the petition for grant of review of the decision of the United States Navy-Marine Corps Court of Criminal Appeals, it is by the Court this 18th day of September, 1996

ORDERED:

That said petition is hereby granted; and

That the decision of the United States Navy-Marine Corps Court of Criminal Appeals is affirmed.

APPENDIX B

IN THE U.S. NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON D.C.

P.J. McLAUGHLIN T.D. KEATING
WILLIAM J. LUCAS

UNITED STATES

v.

Anthony J. Goins, 228 27 8415
Machinist's Mate Fireman
Apprentice (E-2), U.S. Navy

NMCM 94 01498 Decided 2 November 1995

Sentence adjudged 5 April 1994. Military Judge: M.R. McGuire. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Naval Training Center, Great Lakes, IL.

Capt J.F. HAVRANEK, USMC, Appellate Defense Counsel

LT KEVIN L. FLYNN, JAGC, USNR, Appellate Government Counsel

PER CURIAM:

The appellant pled guilty to unpremeditated murder in violation of Article 118(2), Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 918(2). His general court-martial composed of officer members sentenced the appellant to confinement for life, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The appellant was protected by a pretrial agreement requiring the convening authority to suspend confinement in excess of 35 years. The appellant's assigned errors[1] are examined briefly in

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[1] I. APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN, DESPITE HIS PROTESTATIONS OF INNOCENCE, TRIAL DEFENSE COUNSEL COERCED APPELLANT TO PLEAD GUILTY PURSUANT TO A PRETRIAL AGREEMENT WHICH REQUIRED HIM TO ENTER INTO A STIPULATION OF FACT WHICH HE AND HIS COUNSEL KNEW TO BE FALSE. (FOOTNOTE OMITTED.)

II. APPELLANT'S PLEA OF GUILTY TO THE CHARGE OF UNPREMEDITATED MURDER IS IMPROVIDENT WHERE APPELLANT PLEADED GUILTY, ON ADVICE OF COUNSEL, FOR THE PURPOSE OF AVOIDING THE DEATH PENALTY WHEN APPELLANT KNEW AND BELIEVED THAT HE WAS INNOCENT OF THE CHARGED MURDER. SEE THE FACTS AND ARGUMENT OUTLINED IN ERROR I.

III. THIRTY-FIVE YEARS IS AN UNREASONABLY LONG PERIOD OF SUSPENSION FOR A GENERAL COURT-MARTIAL SENTENCE.

IV. THE MILITARY JUDGE ERRED BY RULING THAT APPELLANT DOES NOT RECEIVE *ALLEN* CREDIT FOR ANY PRETRIAL CONFINEMENT SERVED AFTER ARRAIGNMENT.

V. [SIC] THE MILITARY JUDGE ERRED BY DENYING APPELLANT'S MOTION TO DISMISS FOR LACK OF SPEEDY

reverse order.

Assignment of Error V is without merit. The appellant's post-arraignment motion to dismiss on speedy-trial grounds was correctly denied by the trial judge. Additionally, the appellant subsequently was found guilty pursuant to his unconditional pleas of guilty. The appellant thereby waived any speedy-trial issue. Rules for Courts-Martial [R.C.M.] 707(e), 910(a)(2), Manual for Courts-Martial, United States, 1984 (1995 ED.) [MCM].

The Government concedes Assignment of Error IV. The military judge's error in ruling that credit for time served in pretrial confinement terminated upon arraignment instead of sentencing will be cured in our decretal paragraph. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Spencer*, 32 M.J. 841 (N.M.C.M.R. 1991).

The appellant's adjudged sentence included confinement for life. In complying with the pretrial agreement, the convening authority suspended confinement in excess of 35 years. The suspension (probation) period was set at 35 years from the date sentence was imposed. The appellant bargained for the suspension term when he agreed to the pretrial agreement. The trial judge found the suspension term acceptable. Record at 344, 345. The appellant now complains that a suspension period of 35 years in his case is unreasonable.

TRIAL. (FOOTNOTE OMITTED.)

A period of suspension shall not be unreasonably long. R.C.M. 1108(D), MCM. The appellant contends that with *Allen* and administrative good-time credits applied against confinement, he could be released from confinement well before the 35 year mark. He concludes that the suspension period would then extend beyond confinement and therefore be unreasonable. Such is not necessarily the case. Discharge from the Navy and permanent release from post-trial confinement terminates the appellant's status as being subject to the UCMJ and results in automatic remission of all suspended portions of a sentence. R.C.M. 1108(e), *United States v. Gurganious*, 36 M.J. 1041 (N.M.C.M.R. 1993). Additionally, we find that a suspension period that places the appellant on probation for the entire period of his confinement is reasonable. *United States v. Snodgrass*, 22 M.J. 866 (A.C.M.R. 1986), *petition denied*, 24 M.J. 234 (C.M.A. 1987). Assignment of Error III is therefore also without merit.

Assignments of Error I ad II are examined together. On 21 October 1993, the appellant confessed to an agent of the Naval Criminal Investigative Service (NCIS) that he murdered Iris Stevens. On 7 March 1994, charges, including premeditated murder, were referred to trial as non-capital. On 2 April 1994, the appellant made a formal pretrial agreement offer to the convening authority. The convening authority approved the agreement two days later. Pursuant to that agreement, the appellant pled guilty to unpremeditated murder. The trial judge found the pleas provident and entered findings of guilty. In an affidavit filed on 8 August 1995, over 16 months after trial, the appellant now claims that he did not kill Ms. Stevens. Instead, he claims another sailor killed her. Additionally, he claims

that both of his trial defense counsel knew that he did not kill the victim but nevertheless told him that he would receive the death penalty unless he pled guilty to unpremeditated murder and entered into a stipulation of fact counsel knew to be false.

The Government has provided this Court with statements of both trial defense counsel refuting the claims of the appellant. In objecting to Government counsel obtaining those statements, we believe that appellate defense counsel misinterprets the meaning of *United States v. Lewis*, 42 M.J. 1 (1995). *Lewis* does not prohibit the Government from receiving voluntarily submitted statements from trial defense counsel such as were provided in this case. After carefully considering the appellant's affidavit, the record, and trial defense counsel's statements we conclude that the post-trial claims made by the appellant are incredible and unworthy of belief. His claims are inconsistent with uncontroverted facts and are rejected as untrue. Just three examples are illustrative of the incredible nature of the appellant's claims. First, his case was referred noncapital weeks before the pretrial agreement offer was made. Trial defense counsel, therefore, could not and did not threaten the appellant with a death sentence to coerce him to enter into the agreement and plead guilty. Second, we reject as preposterous the appellant's claim that he falsely confessed to a brutal murder because otherwise the real perpetrator would have told his wife that he had cheated on her before their marriage. Finally, the appellant's post-trial claims are completely at odds with his spontaneous and remorseful in-court statement made directly to the victim's family. Record at 310, 311. Assignments of Error I and II are therefore without merit.

Accordingly, the findings and sentence, as approved below, are affirmed. It is hereby ordered that, if not already done, the appellant be given an additional 20 days *Allen* credit to correctly reflect all time in pretrial confinement.